It is true that the proviso is peculiar in that in those cases where the value of the goods cannot be ascertained no minimum penalty is laid down, but I think the reason for this is that it is only where the value of the goods is small that the minimum punishment will be less than $5,000 and it is only where the value of the goods is large that the penalty will be more than $5,000. However this may be, the wording of the principal paragraph is to my mind so clear that there is no justification for attempting to modify it in any way by reference to the proviso.

In my opinion, therefore, the learned President was bound to impose a penalty of $5,000 upon conviction on the third charge. I regret this conclusion, because I think the penalties imposed by the learned President were quite sufficient in the circumstances of the case. These provisions in Section 131 for minimum penalties have been carried over from the Customs Enactment, 1936. There may have been reasons at the time when that Enactment was passed for laying down minimum penalties, but in these days when Sessions Courts are presided over by qualified men it seems to me unfortunate that the legislature should have retained a provision which in effect abrogates an important provision of *Magna Carta* and may result in grave injustice to an accused person who has committed little more than a technical offence.

In his grounds of decision the learned President dealing with this question of sentence says :—

"If I had been convinced that I was wrong, I would have imposed $1,000 on the first charge and discharged the accused on the 2nd and 3rd charges."

I have grave doubts as to whether, in view of the finding of fact that the 1st accused knew what the goods were the learned President or this Court would be justified in adopting this course. I think the learned President had in mind the extenuating circumstances that the accused was an employee and was really acting on instructions. Moreover, it is a peculiar feature of this case that, although it seems impossible to see how various other persons (including the managing partner) were not involved in this matter, the whole burden of guilt has been placed on this one accused. There is also the point, as far as the export of the goods is concerned, that the prohibition is not absolute — it is a prohibition to export without licence. Although I have come to the conclusion, therefore, that there would be more justification for a discharge in respect of the offence under Section 131 than in respect of the false declaration under Section 129 yet I think it would not be right to act under Section 183 of the Criminal Procedure Code in order to evade the minimum penalty prescribed by the legislature. It has been laid down in England that Magistrates should not discharge an offender in respect of motoring offences involving a compulsory disqualification unless there are genuine extenuating circumstances justifying such discharge. (See *Gardner v. James*[4], *Tayor v. Saycell*[5]). The present case is not one I think in which any Magistrate would discharge if the question of this minimum penalty did not arise. I feel bound, therefore, to allow the appeal of the Crown and impose the minimum penalty of $5,000 in respect of the third charge, with six months' imprisonment in default.

These three charges being all part of the one transaction I think it is a case where concurrent sentences would be imposed if imprisonment were involved; and therefore having imposed a penalty of $5,000 on the third charge I shall reduce the fine in respect of the first charge to $1 or one day's imprisonment in default.

The order made by the Sessions Court for forfeiture of the goods is varied by substituting an order that the 50 cases mentioned in the third charge be forfeited.

Order accordingly.

Solicitors for the accused: *Hogan, Adams & Allan.*

LIM SOO HAK & ANOR. v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) November 23, 1954]

[Penang — Criminal Appeal No. 49 of 1954]

Juvenile Courts Ordinance, 1947 ss. 12(3) and 13(4) — Procedure in trial before Juvenile Court.

In this case the 1st appellant who was a juvenile was charged in the Juvenile Court with assisting in carrying on a public lottery. She claimed trial and after hearing the evidence the Juvenile Court recorded a conviction and made an order for a fine of $1,000 to be paid by the father or the brother of the appellant. The record of trial did not show whether the father was present at the trial; nor was there any record that he was asked what he had to say.

Held: (1) there was in this case a breach of s. 13(4) of the Juvenile Courts Ordinance which provided that no order shall be made against the parent or guardian without giving the parent or guardian an opportunity to be heard; (2) there was also a breach of s. 12(3) of the Juvenile Courts Ordinance which provided that the word "conviction" shall cease to be used in relation to children and young persons dealt with by the Juvenile Court.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for the appellants.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J. : — The 1st appellant was a juvenile and was charged in the Juvenile Court with assisting in carrying on a 100 number lottery and a

1,000 number lottery. She claimed trial and after hearing the evidence the Juvenile Court made an order for a fine of $1,000 to be paid by the father or the brother of the appellant. The 2nd appellant was the father of the 1st appellant.

The first point taken by Mr. Lim Kheng Kooi, who appeared for both appellants, was that the order for the fine to be paid by the juvenile's brother was irregular. With this submission I agree, as I know of no provision in the Juvenile Courts Ordinance which enables the Court to fine anyone but the parent or guardian of the offender. This, however, was a small matter and could easily have been dealt with by varying the Court's order so as to exclude the brother.

A more substantial ground of appeal was that the father was not present at the hearing; that he was not given any opportunity of being heard; and in particular, that he was given no opportunity of satisfying the Court under the provisions of sub-section (1) of Section 13 of the Juvenile Courts Ordinance that he had not conduced to the commission of the offence by neglecting to exercise due care of the child.

In this connection I feel bound to point out that the record in this case is very unsatisfactory in many respects. The case came before the Juvenile Court first on the 25th September, 1954 when the then President made the following note :—

> "Accused charged.
> Claims trial.
> Che Mohamed Noor unable to proceed.
> To 2.10.54 for hearing."

Immediately following this entry comes the evidence of the 1st Prosecution Witness. There is nothing in this part of the record to show upon what date the hearing took place, who the Advisers were, or who was present. It is true that the date on which this evidence was taken can be inferred by reference to the Charge Sheet, which shows that the second hearing was, in fact, on the 2nd October, 1954; but it would have been preferable if the date had been inserted as part of the written record; and there certainly should have been a note to show who was present at the hearing. There should also in my opinion have been a note stating who had been chosen as Advisers.

Whilst there is nothing specifically laid down in the Criminal Procedure Code as to exactly how much of this kind of information should be recorded in a Juvenile Court case I should have thought that it was established as a matter of practice that the names of the parties and Counsel present (if any) would be noted, as well as the names of the Advisers. This is always done in the High Court in trials with Assessors, although there is no specific section of the law which enjoins this. I am aware that there is a space on the Charge Sheet for the insertion of the names of the Prosecuting Officer and Defending Counsel, but these names often change at subsequent hearings and in any event special considerations arise in a case before a Juvenile Court.

It is true that the procedure in Juvenile Courts is governed by the Criminal Procedure Code as modified or extended by the Juvenile Courts Ordinance so that in a sense trials before these Courts are theoretically "summary trials"; nevertheless I take the view that it would be in accordance with the spirit of the Juvenile Courts Ordinance that the atmosphere of a Juvenile Court should have some at least of the elements associated with the manner in which the Courts of Chancery deal with infants in civil cases and that special care should be taken to ensure that all proper parties are before the Court and have the fullest opportunity of being heard. I feel sure that this is usually done but I would emphasise the importance of making it appear on the record that it has been done.

In his grounds of judgment the learned President says the offender was present with her parents and so was the Probation Officer. Counsel for the appellants, however, informed me and the father subsequently stated on oath before me that he was not present at the actual hearing but was sent for by the mother after judgment had been given and then made an application to the Court for payment of the fine by instalments, which, he told me, was granted. Although no such order appears anywhere in the record it would appear that the father is correct because the Charge Sheet shows a fine receipt for $500 dated the 2nd October, 1954. In any event there is nothing anywhere in the record to suggest that the father was asked what he had to say or given any opportunity of being heard, although sub-section (4) of Section 13 of the Juvenile Courts Ordinance states specifically that no order shall be made against the parent or guardian without giving the parent or guardian an opportunity to be heard. There was thus a clear breach of a mandatory provision of the law governing the procedure in this case.

There is also in this record a breach of the equally clear provisions of sub-section (3) of Section 12 of the Ordinance, which says that the word "conviction" shall cease to be used in relation to children and young persons dealt with by the Juvenile Court. In the record the finding of the Court is stated as being "convicted".

In the circumstances it was clear that the order made by the Juvenile Court was irregular. In so far as the decision of the Juvenile Court amounted to a

finding of guilt no point was taken by the appellants; it was the order based upon that finding that was in question, and as far as this was concerned I was asked by Counsel for the appellants to exercise my powers of revision and deal with the case myself. The learned Deputy Public Prosecutor agreed that this was the best course. I therefore proceeded to hear the father, who elected to give evidence on oath. He failed, however, to satisfy me that he had not conduced to the commission of the offence by neglecting to exercise due care of the child in question.

The third paragraph of the learned President's grounds of judgment reads as follows :—

"3. It is becoming increasingly obvious from cases brought in the Juvenile Court that the organisers of these illegal lotteries are using children to collect for them. The only way where there is a good family background, as there is in this case from the probation report, is to fine the parents under section 13 of the Juvenile Courts Ordinance. This is the decision that the Court came to on this occasion."

I do not find myself entirely in agreement with the suggestion that where there is a good family background the only way is to fine the parents. I should have thought that the best way would be to prosecute the organisers. There is no evidence in this case to suggest that the parents were the organisers — and if there had been they ought to have been charged themselves. Nor were the parents charged with permitting the house to be used as a common gaming house on the ground that it was used for the purposes of a lottery. It must be assumed, therefore, that they were ignorant of what was going on. I think the distinction must be kept in mind between fining parents because they are in some way connected with a lottery and fining them because they have failed to exercise sufficient control over their children.

In this particular instance it appeared that the father was a person of good character, who had been in business for some 17 years and whose business was one in quite a small way. He stated that his monthly profits were in the region of $300 to $400 a month and he had a wife and nine children to support. Counsel for the appellants and the Deputy Public Prosecutor both agreed that the powers given to the Juvenile Court by Section 12 and by Section 13 of the Ordinance are cumulative and that therefore it is permissible both to impose a fine and to order the parent or guardian to execute a bond to exercise proper care and guardianship.

Taking all the circumstances into consideration, therefore, I decided that the sentence I should impose would be a fine of $500 to be paid by the father and an order that the father do execute a bond in the sum of $250 without sureties to exercise proper care and guardianship of the offender for a period of two years.

For the reasons above given :—

(1) I set aside the finding of the Juvenile Court and ordered that the word "Convicted" be struck out of the original record and all copies thereof and the expression "Finding of guilty" substituted therefor;

(2) I set aside the sentence of the Juvenile Court and substituted therefor and order that the father be fined the sum of $500 and do execute a bond in the sum of $250 without sureties to exercise proper care and guardianship of the offender.

Order accordingly.

Solicitor for the appellants: *Lim Kheng Kooi.*

WONG KOK WAH v. REGINA

[A. Cr. J. (Spenser-Wilkinson J.) January 17, 1955]

[Penang — Criminal Appeal No. 60 of 1954]

Customs Ordinance, 1952, s. 131(1)(d) — Evidence tending to show that accused had committed a similar offence on a different occasion — Whether such evidence admissible — Procedure where Magistrate accepts accomplice's evidence without corroboration.

In this case at the trial of the appellant for being in possession of uncustomed goods, evidence was given by a prosecution witness that he had been arrested for carrying certain goods of the appellant which were Headache powders similar to those in respect of which the appellant was charged. This witness stated that the appellant gave him the goods when he was going off duty and that the appellant asked him to take the goods to a rubber godown and wait for him. The witness said he was arrested before he could reach his rendezvous.

Held: (1) the evidence of the witness was clearly evidence tending to suggest that the appellant had committed a similar offence on a different occasion; (2) such evidence was not admissible as it went to show merely that the appellant was likely to have committed the offence charged and therefore should not have been admitted.

Semble: Where a Magistrate decides to accept the evidence of an accomplice without corroboration he should give definite reasons for so doing.

Case referred to :—

(1) *R. V. Raju & Ors. v. R.* (1953) M.L.J. 21.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J. : — The appellant was charged with possession of uncustomed goods, to wit 180 dozen Tiger Headache Powders contrary to Section 131 (1) (d) of the Customs Ordinance, 1952.